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May 16, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-98/Buckeye Cablevision

Dear Mr. Caton:

Enclosed please find an original and 16 copies of the Comments of Buckeye Cablevision in the proceeding of CC Docket No. 96-98. We have included four extra copies, one for each of the Commissioners.

We also hand delivered a hard copy and a copy on disk of these Comments to Janice Miles of the Common Carrier Bureau and a hard copy to ITS.

Should you have any questions regarding these Comments, please contact the undersigned counsel.

Sincerely,



Mark J. Palchick
Counsel for
Buckeye Cablevision, Inc.

MJP/mcl

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)
)
Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

RECEIVED

MAY 16 1996

COMMENTS OF BUCKEYE CABLEVISION, INC.

Buckeye Cablevision, Inc., ("Buckeye") and Blade Communications, Inc., by their attorneys, respectfully file Comments in the above referenced Rulemaking proceeding. Buckeye is a small cable operator which provides service to approximately 157,000 customers in Ohio and Michigan. In its Toledo, Ohio system (which currently has approximately 127,000 customers), Buckeye has constructed a coaxial fiber optic hybrid system with over 210 miles of fiber optic plant. Buckeye is a family owned and locally operated small cable television company that has been providing service under the same ownership for over thirty years. Buckeye desires to continue providing service to its community under the same ownership. It is, therefore, evaluating its options on how best, as a small operator, to stay in the business and continue to serve its community. However, unless the actions proposed herein are adopted, Buckeye's and other cable operators' options will be limited. This will be due in part because cable operators have been stymied in their ability to compete with the local exchange carriers in their service area by the difficulty in obtaining reasonable interconnection arrangements with the local exchange carrier.

SCOPE OF COMMENTS

Buckeye requests, that as part of CC Docket No. 96-98, the Commission adopt national interconnection rules which require that states process interconnection agreements, pursuant to those national rules, expeditiously, in no event later than 45 days after submission. In the interim, the FCC should limit the right of local exchange carriers to provide franchised cable television service or open video service to customers within the LEC's service area.

Buckeye requests this action because the FCC has the power to engineer true competition in communications services. However, first the FCC must recognize the nature of the competitors' relative market power. In England, this was recognized by permitting cable television systems to provide telephone service for a period of years, while at the same time British Telecommunications, the local telephone company, was restricted in its provision of video services. The superior market power of the local exchange carriers, and the technical and legal barriers to entry imposed on cable operator's provision of local telephone service has resulted in the exact opposite result in this country. Local telephone companies ("Local Exchange Carriers" or "LECs") today can legally provide cable television service in their service area, but a cable company is prevented by the current lack of state authorizing regulations and the market power of the incumbent local exchange carrier from providing local telephone service. In some instances, there could be a year or greater between the time when the local exchange carrier begins providing video service and when the cable company is finally able to interconnect in order to provide local telephone service. That the industry with greater market power is guaranteed earlier entry is an aberration of good public policy and is unconscionable.

The local competition provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "1996 Telecomm Act") cannot be achieved unless the incumbent video provider can compete with the incumbent telephony provider at the same time as the incumbent telephony provider is able to compete with the incumbent video provider. This is especially true since today the local cable operator is often the only facilities based provider capable of competing with the local telephone company. The incumbent local exchange carriers, however, have been able to frustrate and delay cable operators' entry into telephony. On the other hand, LECs are able to immediately compete with local cable television companies and bleed small operators. The FCC has the power to level the playing field by adopting national interconnection rules, requiring states to act swiftly, and by preventing local exchange carriers provision of cable service in their own service area until such time as cable is or could interconnect with the local exchange carrier. Buckeye submits that this should be the earlier of one year after the effective date of the FCC's and the state's interconnection rules or the date that physical interconnection actually occurs in a specific service area or community.

PROPOSED RULE ADVANCES GOALS OF 1996 TELECOMM ACT

When the 1996 Telecomm Act repealed §533(b)(1) of the Communications Act it did so in the context of increased competition to the LEC as the result of the adoption of §251 and other sections of the 1996 Telecomm Act.¹ Until FCC rules implementing §251 and §252 of the 1996

¹ Congress repealed §533(b)(1) as a result of various federal courts holding that an absolute ban on a LEC providing cable service in their areas was unconstitutional. None of these decisions, however, prohibit reasonable entry restrictions.

Telecomm Act become effective, the countervailing force competition was to provide to the LECs will not exist.

The purpose of the 1996 Telecomm Act is to “provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced Telecommunications and information technologies and services to all Americans by opening all Telecommunications markets to competition”² Senator Ernest F. Hollings has said,

“competition is the best regulator of the marketplace. But until that competition exists, until the markets are opened, monopoly provided services must not be able to exploit the monopoly power to consumers disadvantage”³

To achieve the competition anticipated by the 1996 Telecomm Act, consumers must have a choice among providers of both video and telephony services. If the competitive flood gates are not opened in both directions at the same time, then the competitive goals of the Act will be “stymied by the morass of regulatory barriers which balkanize the Telecommunication industry into protective enclaves.”⁴

The elimination §533(b)(1) of the Communications Act by the Telecomm Act opened the cable television market to the flood gates of competition from local exchange carriers. However, until the interconnection rules are effective, cable operators cannot provide competition to local exchange carriers. As the Commission recognized at paragraph 6 of the Notice of Proposed Rulemaking in CC Docket No. 96-98 (April 19, 1996) (NPRM), “if the incumbent LEC has no obligation to interconnect and to arrange for mutual transport and termination of calls, it could

² Cong. Rec. H1078 (daily ed. January 31, 1996) (Conference Report on S.632, Telecommunications Act of 1996).

³ Cong. Rec. S.7894 (daily ed. June 7, 1995).

⁴ Cong. Rec. S.7886 (daily ed. June 7, 1995) (Statement of Senator Lott).

effectively block or greatly retard entry into switched local service by using its economies of scale and network externalities as impediments to entry.” Moreover, the Commission found that interconnection rules were necessary before cable television systems are capable of providing a substitute for wireline telephony services.⁵

The Commission has further recognized that local cable operators can provide competition to the LECs.⁶ In fact, in most instances the local cable operator is the only facilities based provider with the communication infrastructure to compete immediately. However, the lack of reasonable interconnection has severely restricted the ability of cable operators to compete for local telephony customers while the LEC can freely compete against the local cable operator for video customers.

THE FAILURE TO ADOPT THE PROPOSED RULE IS DISCRIMINATORY

In Michigan, Illinois and Ohio, Ameritech, a local exchange carrier, has obtained cable television franchises to provide cable service in 16 municipalities including suburban Detroit, Chicago, Cleveland and Columbus. At the same time, Ameritech has employed delaying tactics to prevent interconnection to its local facilities which have effectively precluded competitive local telephone service by the cable companies in those areas:

Time Warner’s experience in Ohio is just one example of how the local exchange carriers have been able to frustrate the ability of cable operators to interconnect. On August 24, 1995 the Public Utilities Commission of Ohio (“PUCO”) granted a certificate to provide

⁵ NPRM at ¶ 7 and 8.

⁶ NPRM at ¶ 9 and FN 22.

switched local exchange service in certain Ohio counties to Time Warner Communications of Ohio, L.P. ("Time Warner") and directed that Time Warner and the relevant local exchange companies begin negotiations relating to interconnection agreements. See In Re Time Warner Communications of Ohio, L.P. et al., PUCO Case No. 94-1695-TP-ACE, Opinion and Order, August 24, 1995. The Cincinnati Bell Telephone Company, a local exchange carrier, appealed the PUCO's decision to the Ohio Supreme Court.

On December 26, 1995 Time Warner filed a report with the PUCO indicating that it had been negotiating with Ameritech Ohio but that no agreement on interconnection issues had been reached. On January 29, 1996, Time Warner filed a complaint against Ameritech in Case No. 96-66-TP-CSS alleging that Ameritech had failed to negotiate in good faith the terms and conditions of a reasonable interconnection agreement. After a hearing and a series of pleadings, the PUCO issued an Opinion and Order on March 21, 1996 which addressed some of the interconnection issues involving compensation for terminating traffic, number portability, interexchange carrier access revenue allocation, and dispute resolution. Ameritech was ordered to implement the Order by filing interim tariffs. However, the PUCO deferred ruling on the issues of directory assistance and directory listings, transit traffic, and E-9-1-1 and directed that those issues be considered by an alternative dispute resolution (ADR) team if the parties did not reach agreement by April 16, 1996. No such agreement was reached on that date. The ADR team report was only recently filed on May 7, 1996 in PUCO Case No. 96-66-TP-CSS.

The point is that due to the efforts of local exchange carriers in Ohio, competition in telephony has not yet commenced because interconnection issues have not been fully resolved.

In the past, such one way competition has not been permitted. A classic example is the way the FCC guided the cellular telephone industry in its infancy.

In the early 1980's, the United States was divided into 305 metropolitan statistical areas and 428 rural service areas. The FCC licensed two facilities based carriers in each market; one was a "Block A carrier" or a "non-wireline carrier" and the other carrier was a "Block B carrier" or a "wireline carrier." At least in Ohio, many of the Block B carriers were subsidiaries of local exchange companies such as Ameritech, GTE, or Centel. The FCC issued licenses to both wireline and non-wireline carriers in each market at about the same time so as to enhance the prospect of competition.

Had the FCC chosen to favor wireline carriers over non-wireline carriers by issuing licenses substantially sooner, non-wireline carriers would have been put at a substantial competitive disadvantage. It should also be noted that local exchange companies were required to offer facilities-based cellular carriers reasonable interconnection upon request. Obviously, the same concerns about promoting competition within the cellular telephone industry over a decade ago exist today with respect to local exchange companies entering video and cable television markets and cable television operators entering the world of telephony.

The Commission stated that the purpose and given proper implementation, the likely effect of unbundling and other provisions of the 1996 Telecomm Act are to "remove both the statutory

and regulatory barriers and economic impediments that inefficiently retard entry and to allow entry to take place where it can occur efficiently.”⁷ Buckeye agrees with the Commission that “This entry policy is competitively neutral; it is pro-competition, not pro-competitor”⁸ However, unless the delays in interconnection are eliminated and unless LECs are limited in their ability to overbuild cable operators in the LECs service until the cable operator can compete against the LEC through interconnection the FCC’s implementation of the 1996 Telecomm Act will be pro-competitor not pro-competition.

CONCLUSION

Buckeye supports the injection of competition into the telephony and video markets promised by the 1996 Telecomm Act. However, this competition must be on a level playing field with the barriers to entry removed simultaneously for all markets. The competition envisioned by Congress can most certainly not occur if the dominant incumbent provider with the greatest assets and which is protected by the highest barriers to entry is permitted to compete against an existing facilities based provider before that competitor is able to compete against it. Therefore, the FCC


⁷ NPRM at ¶ 12.

⁸ Id.

must adopt national rules for interconnection which sweep away regulatory and economic impediments to the competition that reasonable interconnection will provide. Moreover, until either the interconnection rules are fully functioning or until there is actually interconnection in a specific area or community the local exchange carriers must be prohibited from offering video service to customers in their service area.

Respectfully submitted,

BUCKEYE CABLEVISION



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